

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices
Inbound Competitive Multi Service Agreements with
Foreign Postal Operators (MC2010-34)
China Post Group
Negotiated Service Agreement

Docket No. CP2017-131

PUBLIC REPRESENTATIVE COMMENTS

(March 17, 2017)

The Public Representative hereby provides comments pursuant to the Commission's Notice Initiating Docket(s).¹ In that Notice, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative.² The Postal Service seeks to include the inbound portion of a bilateral agreement with China Post (China Post 2017 Agreement) within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (Competitive Multi-Service Agreements) product. Notice at 1.

The Postal Service filed under seal a non-public (unredacted) version of Governor's Decision No. 10-3 and a supporting financial model estimating the volume, revenue, costs and contribution of the China Post 2017 Agreement.

In Order No. 546, the Commission approved the addition of the Competitive Multi-Service Agreements product to the competitive product list, and included within that product an agreement with Koninklijke TNT Post BV and TNT Post PakketService Benelux BV (TNT Agreement).³ The Commission subsequently added bilateral agreements with Posten Norge AS (Norway Post Agreement) and the China Post Group

¹ Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, March 14, 2017.

² Notice of United States Postal Service of Filing Functionally Equivalent Inbound Competitive Multi-Service Agreement with a Foreign Postal Operator and Application for Non-Public Treatment of Materials, March 13, 2017 (Notice).

³ Order No. 546, Order Adding Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 to the Competitive Product List and Approving Included Agreement, Docket Nos. MC2010-34 and CP2010-95, September 29, 2010.

(China Post 2011 Agreement).⁴ In its Order No. 840, the Commission also approved the TNT Agreement as the baseline agreement for purposes of functional equivalency analyses of subsequent agreements to be added to the Competitive Multi-Service Agreements product. Order No. 840, at 5. With respect to the China Post Group, the Commission approved the following bilateral agreements: China Post 2013 Agreement, China Post 2014 Agreement, and China Post 2015 Agreement.⁵

The China Post 2017 Agreement establishes prices and classifications for delivery in the United States Express Mail Service (EMS) and “a new bilaterally negotiated product.”⁶ Notice at 4. The China Post 2017 Agreement is intended to become effective April 1, 2017, and remain in effect until June 30, 2018 (15 months), unless terminated sooner. *Id.*

The Postal Service asserts that the China Post 2017 Agreement is functionally equivalent to the inbound portion of the baseline TNT Agreement and that the prices comply with the requirements of 39 USC §3633(a). *Id.* at 5-6. The Postal Service also maintains that the China Post 2017 Agreement is substantially similar to the China Post 2015 Agreement. *Id.* at 3. Therefore, the Postal Service requests that the China Post 2017 Agreement be included within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-34) product. *Id.*

COMMENTS

The Public Representative has reviewed the China Post 2017 Agreement and the supporting financial model filed under seal that accompanied the Postal Service’s Notice. Based upon that review, the Public Representative concludes that the China

⁴ Order No. 840, Order Concerning An Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, Docket No. CP2011-69, September 7, 2011; Order No. 859, Order Concerning An Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, Docket No. CP2011-68, September 16, 2011.

⁵ Order No. 1591, Order Concerning An Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement (with China Post Group), Docket No. CP2013-23, December 21, 2012; Order No. 2065, Order Approving An Addition Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement, Docket No. CP2014-39, April 24, 2014, and Order No. 2708, Order Approving Additional Foreign Postal Operators 1 Negotiated Service Agreement, September 15, 2015.

⁶ Unlike the 2015 China Post Agreement, the 2017 China Post Agreement does not include air and surface CP and surface air lifted parcels. Notice at 4.

Post 2017 Agreement is functionally equivalent to the TNT Agreement. Moreover, the negotiated prices applicable to inbound competitive services in the China Post 2017 Agreement are likely to generate sufficient revenue to cover costs.

Functional Equivalence. The Postal Service states that the China Post 2017 Agreement is functionally equivalent to the baseline agreement because the agreements remain similar in scope and purpose. *Id.* at 3. The China Post 2017 Agreement establishes prices for the delivery of EMS, the same competitive shipping service that is in the TNT Agreement. *Id.* at 4. However, the Postal Service identifies differences between the China Post 2017 Agreement and the inbound portion of the TNT Agreement. Notice at 5-7.

A review of the supporting financial models for the China Post 2017 Agreement and the TNT Agreement reveals that agreements share similar cost and market characteristics. In terms of market characteristics, both agreements establish negotiated prices for inbound EMS. In terms of cost characteristics, both financial models develop unit costs for mail processing, delivery, domestic transportation, and domestic other costs associated with inbound EMS. The Public Representative therefore concludes that the China Post 2017 Agreement is functionally equivalent to the TNT Agreement.

39 U.S.C. § 3633. Pursuant to 39 U.S.C. § 3633(a), the Postal Service's negotiated prices for competitive products must not result in the subsidization of competitive products by market dominant products; ensure that each competitive product will cover its attributable costs; and, ensure that all competitive products collectively contribute an appropriate share of the institutional costs.

The Postal Service's financial model does not directly address whether the addition of the China Post 2017 Agreement to the Competitive Multi-Service Agreements product will result in the product as a whole covering costs as required by 39 U.S.C. § 3633(a)(2). However, the Postal Service's financial model indicates that the negotiated prices in the China Post 2017 Agreement, including sufficient contingencies, will generate sufficient revenues to cover its costs. The Public Representative notes that in the FY 2015 Annual Compliance Determination (ACD) Report, the Commission determined that the Competitive Multi-Service Agreements

product covered costs.⁷ Therefore, the addition of the China Post 2017 Agreement to the Competitive Multi-Service Agreements product is not likely to cause the product's cost coverage to fall below 100 percent. As a result, the addition of the China Post 2017 Agreement to the Competitive Multi-Service Agreements product should allow the product to continue to comply with 39 U.S.C. § 3633(a)(2), and should not result in competitive products as a whole being subsidized by market dominant products, in accordance with 39 U.S.C. § 3633(a)(1). Finally, the addition of the China Post 2017 Agreement to the Competitive Multi-Service Agreements product should improve the likelihood that competitive products as a whole contribute an appropriate share to the Postal Service's institutional costs, consistent with 39 U.S.C. § 3633(a)(3).

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

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⁷ FY 2015 Annual Compliance Determination, Docket No. 2015ACR, March 28, 2016, at 73.